

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>SHIRLEY ANN CHIN and</b>	)	
<b>GERY LIVINGSTON-GROSS,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
	)	
<b>vs.</b>	)	<b>CASE NO. 3:13-1282</b>
	)	<b>JUDGE TRAUGER/KNOWLES</b>
	)	
<b>CIRCUIT OF THE AMERICAS,</b>	)	<b>JURY DEMANDED</b>
<b>D/B/A COTA,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>FERRARI CLUB OF AMERICA,</b>	)	
<b>D/B/A FCA,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

The Court received a letter dated March 21, 2014, from pro se Plaintiff Shirley Chin, the body of which stated in relevant part:

I am informing you that I would like to dismiss the case against the Circuit of the Americas. My husband, Gery L. Gross, passed away 2/25/14 and I do not have the energy to carry on with any disputes. I beg your forgiveness in all matters involved.

Docket No. 25, p. 1.

The undersigned subsequently submitted a Report and Recommendation recommending that the claims of Shirley Chin against both Defendants be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(2). Docket No. 26, p. 2-3. The Report and Recommendation further stated:

Pursuant to Fed. R. Civ. P. 25(a), however, the claims of Plaintiff Gery L. Gross are not “automatically” dismissed by his death. Those claims should remain pending as contemplated by Rule 25(a)(1).

Judge Trauger subsequently accepted the Report and Recommendation, noting in part that the claims of Gery Livingston Gross remained pending, and directed that the Clerk return this case to the undersigned for further handling. Docket No. 30.

Fed. R. Civ. P. 25(a)(1) provides in relevant part:

(a) Death.

(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. *If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.*

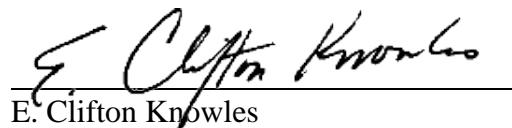
(Emphasis added).

The “Suggestion of Death of Plaintiff Gery Livingston-Gross” was filed March 21, 2014, in accordance with Rule 25(a). More than ninety (90) days has passed, and no motion for substitution has been made.

For the foregoing reasons, pursuant to Fed. R. Civ. P. 25(a)(1), the undersigned recommends that this action by Gery Livingston-Gross must be DISMISSED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any

response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.



E. Clifton Knowles  
E. Clifton Knowles  
United States Magistrate Judge